UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1420
19 July 1995

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-fourth session

SUMMARY RECORD OF THE 1420th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 12 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-17497 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

FOURTH PERIODIC REPORT OF UKRAINE (CCPR/C/95/Add.2) (continued)

1. The CHAIRMAN invited the delegation of Ukraine to reply to questions raised orally by members of the Committee in connection with section II of the list of issues.

2. Mr. KRUKOV (Ukraine) said he would begin with questions relating to the imposition of the death penalty. At such short notice, he had been unable to obtain figures concerning executions in 1994, but there were no grounds for believing - as one Committee member had suggested - that the subject was cloaked in secrecy.

3. As to the basic issue of retaining or abolishing capital punishment, he appreciated the note of caution voiced by several members of the Committee concerning the value to be attached to vox populi, but suggested that no truly responsible and representative government could ignore public opinion entirely. Governmental thinking was only one aspect of the question; actual possibilities of resolving the dilemma were another; and the moral and political state of the society concerned was yet another. Paragraph 44 of the report (CCPR/C/95/Add.2) showed that the number of crimes for which the death sentence was envisaged had been reduced from 32 to 20, 15 of which were taken into account only if they were committed in wartime or in a warlike or conflictual situation. Ukraine was, moreover, mindful of the Committee's general comment 6, and notably of the view expressed therein that while States parties were not obliged to abolish the death penalty totally, they were obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". He understood the Committee to have acknowledged in another general comment that there was a problem concerning the use of the death penalty in time of war. His country was sincerely endeavouring to follow the lead set by the Committee and would continue to take the greatest possible account of its views. However, realities could not simply be brushed aside. Globally, more than 100 countries - and he named several developed countries among them - still applied the death penalty, and in certain countries the number of capital offences had actually been increased in recent times. In Ukraine, four generations had lived through conditions where little store had been set by human life; today, crime - and especially violence and murder - was increasingly prevalent, and the courts were responding accordingly in sentencing. Moreover, the present Government was mainly made up of persons aged between 40 and 60: their attitudes differed from those of the younger generation, and as democrats they must listen to the views of their constituents, who wanted crime to be stopped.

4. Turning to questions on investigations, he said that, as a general rule, police officers were involved at a lower, functional level (in incident reporting and the collection of evidence, for example); the Public Prosecutor's Office handled serious crimes and was responsible for more detailed inquiries, as well as for making recommendations on the follow-up of cases. Police officers and other investigating bodies could only carry out

arrests or searches, tap telephones or take other such measures in accordance with the provisions of a recent law on the subject and with the prior approval of the Public Prosecutor; penalties were laid down for non-compliance with those conditions.

5. Allegations of police misconduct, including torture, could be lodged at any time with the Public Prosecutor's Office, which was then obliged to carry out a thorough and not merely cursory investigation as part of its overall responsibility for supervising the application of the law. Following such an investigation, the Office was responsible for making recommendations on further action, including the possible arraignment of the officials named in the allegations. A finding of guilt could lead to administrative or penal sanctions.

6. Concerning the appointment and status of the Public Prosecutor, and the monitoring of the Office's activities, he explained that, in accordance with the interim constitutional arrangements currently in force, the Supreme Council had examined the question and decided to relieve the Public Prosecutor of his functions. That initiative had brought the Council into conflict with the President, in whom the law at the time had invested sole responsibility for such appointments or dismissals. The conflict had been resolved by the cancellation of the Supreme Council's decision, it being agreed that in future the Public Prosecutor would be appointed by the Council on a nomination by the President. The Public Prosecutor was responsible for appointing the staff of his Office; a special, independent service within the Office was charged with supervising and ensuring the proper application of the law throughout the country by individuals and legal entities alike. In fact, the discretionary authority of the Public Prosecutor's Office remained as broad as it had been under the previous regime. It was clear that, in the interests of greater democracy, its status, role and powers would have to be reviewed: that question was currently under discussion as part of the legal reform process launched in 1993, and examples in other countries were being considered. It was essential that the Public Prosecutor should perform in equitable fashion the dual function of pressing charges made by the State while at the same time guaranteeing due process of law with respect to all the parties.

7. With regard to preventive detention, he explained that a law adopted in July 1994 had provided for 30-day detention without charge, subject to a substantiated request from the Public Prosecutor's Office. By May 1995, the principal purpose of the law, namely to counter the upsurge in organized crime, had been considered achieved, and the law had been repealed. Detention without charge was currently limited to a maximum of 48 hours, the prisoner must be allowed a private meeting with a lawyer within 24 hours, and it was now mandatory rather than discretionary for the investigating authority to notify the detainee's family or friends.

8. On the general question of the role of lawyers in ensuring observance of due legal form during the pre-trial period, he drew attention to the fairly detailed information on new standards that was contained in paragraph 82 of the report; the provisions mentioned therein had been enforceable since 1 April 1995, notwithstanding a certain amount of reluctance on the part of the investigating and police forces, as well as practical difficulties linked to the fact that Ukraine had only 11 lawyers per 100,000 inhabitants.

The latter state of affairs would, it was hoped, be alleviated in a few years' time when the first graduates of the many new public and private law schools currently being established began to exercise their profession, for which purpose due registration by the Ministry of Justice was a prerequisite. On a related question, he noted that judges were appointed at lower levels by the President, and at higher levels jointly by the President and the Supreme Council from among candidates who must provide documentary evidence of their qualifications. Due to the current shortage not only of lawyers but also of judges (there were only 8 per 100,000 inhabitants), there were no special judges for minors; individual judges, however, took a particular interest in juvenile cases.

9. With regard to administrative measures concerning immigrants, he said that, while duly registered foreigners were generally treated in the same fashion as Ukrainian citizens, unlawful entrants were subject to legal action similar to that taken in most countries.

10. On the question of compensation, he said that, under an expanding series of legal guarantees, victims of any abuse by the State were now entitled, like victims of natural disasters, to reparation for harm suffered.

11. Concerning the training of prison staff, he recalled his earlier mention of the general programme of reform launched with the aim of raising standards in the penitentiary system as a whole. That programme included educational measures to familiarize prison staff with their duties as well as their rights, and with the limitations placed on their authority. Also in connection with prison conditions, he said that convicted prisoners were under an obligation to engage in gainful work according to their abilities and state of health. Detainees on remand were not so obliged, but could work if they wished. In each case, earnings were used to improve their material welfare in the institutions where they were held.

12. On another issue, he submitted that a hierarchy of rights indeed existed. For example, the right to life could not be set on the same plane as the right to freedom of expression, and the right to hold an opinion and the right to express that opinion were obviously not of identical value. There could be few situations where some restriction of rights was not called for in the general interest. Ukraine was no exception in that connection.

13. Finally, he said that nuclear weapons were indeed still present in Ukraine, but were progressively being dismantled or removed under the terms of a tripartite agreement with the United States and the Russian Federation. The Government was carefully monitoring the situation, in which the President took a close personal interest.

14. Mr. MAVROMMATIS drew the Ukrainian delegation's attention to available documentation that could be helpful in efforts to ensure the absolute independence of the judiciary. He also specially commended to the delegation's attention the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (The Havana Rules).

15. The CHAIRMAN invited the Ukrainian delegation to respond to the questions in section III of the list of issues, which read:

"III. Freedom of movement, right to privacy, freedom of thought, conscience and religion, freedom of expression, prohibition of propaganda for war and incitement to national, racial or religious hatred, right to freedom of association (arts. 12, 17, 18, 19, 20, 22 and 25)

(a) Please provide information on the practical consequences of the adoption of a refugee law on 24 December 1993 and on steps taken to fulfil international legal obligations under the Covenant in order to enhance the protection of refugees and asylum seekers in Ukraine, in particular as regards the principle of non-refoulement.

(b) In view of the fact that the steps envisaged to abolish restrictions to the freedom of movement and the free choice of a place of residence have not yet been put into effect due to 'organizational and economic reasons', please elaborate on the difficulties faced in that regard as well as on the extent of the remaining restrictions (see paras. 72 to 75 and 98 of the report).

(c) Please provide information concerning the law and practice relating to permissible interference with the right to privacy, in particular those relating to the application of measures of a 'medical character in the sphere of psychiatry, alcoholism and drug addiction' (see para. 137 of the report).

(d) What measures have been taken to overcome the difficulties with regard to the implementation of article 18 of the Covenant mentioned in paragraphs 156 to 159 of the report and clarify the impact of the registration process on the exercise of the freedom of religion (see para. 158 of the report)?

(e) Please provide information on the experience to date with implementation of the provisions in the Ukrainian Penal Code which have established 'liability for concealing or distorting information on environmental conditions or morbidity among the population and also for the preparation, processing or selling of radiation-contaminated foodstuffs or other products' (see para. 53 of the report).

(f) In view of the statements in paragraphs 162 and 167 of the report, please elaborate on the legal limitations as well as practical difficulties in the enjoyment of the right to freedom of expression.

(g) What concrete steps have been taken to prevent and suppress the advocacy of national, racial or religious hatred, in particular the dissemination of 'openly fascist and anti-Semitic publications' (see para. 176 of the report)?

(h) Please elaborate on the 'problems of a statutory and practical nature in regulating the democratic procedure for the holding of public events' referred to in paragraph 181 of the report.

(i) Has any progress been made since the submission of the report in overcoming the 'considerable difficulties' faced in the implementation of article 25 of the Covenant, as referred to in paragraph 213 of the report?"

16. Mr. KRUKOV (Ukraine) said, in reply to question (a), that the law on refugees had been adopted on 24 December 1993 because of the need at the time to give a specific status to the large number of ethnic Ukrainian refugees from the Trans-Dniester region seeking asylum in Ukraine. The law gave them legal status and confirmed their residence in Ukraine. It defined a refugee and described conditions under which refugee status was not granted. It listed the rights and duties of people requesting refugee status and the procedure for granting it; refugee status was granted no more than one month following receipt of a request and for a period of three months, extendable, if necessary, by the local authorities. The law listed the social and economic rights of refugees, as well as their right to protection, all of which were similar to the rights of Ukrainian citizens. It also covered their duties, and prohibited the practice of expulsion or refoulement. A resolution passed by the Ukrainian Council of Ministers on 13 June 1995 laid down the requirements for a special refugee document, which was similar to a Ukrainian passport and contained information allowing the authorities to identify the refugee.

17. Turning to question (b), he said that restrictions on the freedom of movement and the free choice of residence were not the result of legislation; they had been introduced because of the economic situation. Settling in certain places involved registering with the local authorities; the restrictions related to the fact that the housing market was not sufficiently developed in Ukraine - in Kiev, for example, accommodation was very scarce and very expensive. In the past, it had been necessary to present one's passport and prove one's registration in order to obtain employment, but that requirement had been abolished by amendments to the Labour Code.

18. As for question (c), two laws had been adopted recently in Ukraine regarding drug addiction and drug trafficking. Another two bills were currently being prepared under the auspices of the Ukrainian Psychiatric Association to cover people suffering from psychological disorders. The State was required to take action in such cases, but efforts were being made to ensure that the practice was not abused, and it was hoped that the new legislation would limit the interference of the State in that area.

19. Turning to question (d), he said that a law had been adopted which had for the first time established a legal basis for the conduct of religious activities. In the light of recent events in Japan and the United States, it was clear that religious activity sometimes represented a potential danger to the community. There had been public disturbances in Kiev following an incident involving the forcible detention of members of a cult, and in that case legislation had been employed which stated that no religious activity should be used to incite racial hatred or war or to call for discrimination or violence. There were also provisions in Ukrainian legislation relating to the

non-regulated activities of foreign proselytizers coming to Ukraine to operate there totally unsupervised; the law stated that religious organizations inviting such persons must inform the authorities of the invitation and accept full responsibility for the acts of the individuals invited.

20. The provisions in the Ukrainian Penal Code referred to in question (e) were intended to ensure an adequate legal basis for guaranteeing the right to health and the right to life and protecting people from the danger of radiation-contaminated foodstuffs or other products. Information was regularly published in the press, but as yet there was no jurisprudence regarding the provisions themselves, which were of a preventive nature. Problems relating to nuclear power stations were clearly of great interest to the people of Ukraine.

21. Turning to question (f), and referring to general comment 10, paragraph 4, he said that in Ukraine the right to disseminate opinions was not regarded as an absolute right. It entailed particular responsibilities and obligations, and therefore some limitations on the right to freedom of expression were permitted, relating in particular to incitement to war, racial hatred, discrimination, violence and various other anti-humanitarian actions. A series of laws had laid the legal basis for the operation of practically all the mass media. In 1995 a law had been adopted on the press, news agencies, radio and television, and the activities of the foreign news media were governed in the same way as those of the domestic media: they had to be registered like other international organizations with the Ministry of Foreign Affairs. There were also certain economic limitations due to Ukraine's economic problems: there was a right to publish, but the ability to publish might be impeded by economic factors. There was no prior censorship of publications in Ukraine, but ex post facto checks were carried out to ensure that publications did not incite people to racial hatred, violate the law against fascism, etc.

22. Explaining that he had answered question (g) earlier on, he turned to question (h), indicating that the problems of a statutory nature had arisen because some, although not all, local authorities had adopted local rules on the holding of demonstrations in particular places. That situation had now been resolved, and there were no statutory impediments to the holding of public meetings. However, there were practical problems. Radical political movements often wanted to hold public meetings on the same day and at the same location, and it was necessary to keep the demonstrators apart in order to avoid possible clashes. It was the task of local authorities to resolve such problems.

23. Referring, finally, to question (i), he recalled that he had already mentioned the adoption of two laws separating the legislative and executive branches of government. Provisions were being drafted that would define the functions of all executive bodies in order to avoid duplication and conflict.

24. The CHAIRMAN invited members of the Committee who so wished to put additional questions in the light of the replies by the representative of Ukraine to section III of the list of issues.

25. Mr. KRETZMER said the report stated that any voluntary organization had to be registered, but gave no information about the criteria for refusing registration or how many groups had been refused registration. A recent report by the United States Department of State indicated that a number of voluntary organizations in Ukraine had been refused registration, notably one at the time of elections whose purpose had been to provide voters with non-partisan information on the democratic process and another, a human rights group in Odessa, which had been threatened with prosecution for operating without being registered. The Department of State report claimed that a group could be refused registration in Ukraine if it was going to duplicate any functional service which the Government already provided; he requested further information on that matter. As for freedom of the press, the major problem was that most of the press was still controlled financially by the Government, which also controlled newsprint and had recently given a further subsidy to the official press by granting it exemption from VAT, but granting no such dispensation to the private press. He wondered whether Ukraine had any plans to privatize the press.

26. Mrs. CHANET, referring to paragraphs 102 and 103 of the report, asked what criteria were applied in rejecting applications for exit visas. She also wished to know what constituted a State secret, access to which was often cited as a reason for not allowing someone to leave his or her country. That notion could be interpreted extremely broadly, and she requested clarification of how it was treated in Ukraine.

27. Mr. PRADO VALLEJO remarked that freedom of the press in Ukraine was restricted in respect of participation by foreigners; he wished to know why there was a 30 per cent limit on foreign participation in the media. The fact that Ukrainian radio and television were still State-controlled involved another restriction on freedom of expression and freedom of information; and there was also an obligation for radio and television to provide information on the Ukrainian Parliament and executive. Authorization was required for the distribution of foreign publications, contrary to article 19 of the Covenant. There were restrictions on the setting up of a political party if it constituted a threat to State security. The previous Government of Ukraine had interfered in the practice of religion, and he wondered whether the property it had confiscated from churches and religious organizations had been returned to them. Article 17 of the Covenant stated that no one should be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, and that everyone had the right to the protection of the law against such interference; the practice in Ukraine of conducting clandestine surveillance and appropriating documents from people's homes after a search which required the presence of only two witnesses was contrary to the provisions of the Covenant. Like Mrs. Chanet, he was concerned about the refusal of exit visas to persons who had access to State secrets. Finally, it seemed to him that the need to register one's place of residence might be contrary to article 12 of the Covenant.

28. Mr. BRUNI CELLI said it was important to understand what paragraph 7 of the report, regarding stopping the activities of and then banning the Communist Party of Ukraine, meant in terms of the resurgence of true political pluralism. The report stated that it had had a healthy effect in practice on the vital activities of Ukrainian society in all spheres, above all making it possible for genuine political pluralism to arise. However, political pluralism meant freedom of action irrespective of political ideology, and it was essential to have that freedom of action for political parties if citizens were to enjoy the freedoms guaranteed under article 25 of the Covenant. The action referred to in paragraph 7 of the report was also contrary to articles 18, 19, 21 and 22 of the Covenant.

29. Mr. MAVROMMATIS said that, if the authorities in Ukraine wished to regulate the scarcity of housing and employment, they should not do so through arrangements such as registration and internal passports, which were contrary to the provisions of the Covenant, but by specific legislation designed to remedy the problem; in any event, arrangements that applied to the entire population in such a manner were far too reminiscent of the practices of the previous regime to remain on the statute book. As for the information contained in paragraph 92 of the report regarding non-observance of the rights of persons in preventive custody or serving sentences in prison, he merely wished to state that if there was a law it had to be implemented, failing which its effectiveness and credibility would be eroded; if a law could not be applied for lack of funds or for some other reason, there should at least be an understanding that the law, or parts of it, would be implemented at a later date. As for paragraphs 147 and 148 of the report, it should be borne in mind that conscientious objection was not always related to religious belief; an atheist could have a conscientious objection to killing people, and the criteria applied should be general, embracing both believers and non-believers. As for paragraph 218 of the report, he wished to point out that article 26 of the Covenant referred to "equal and effective protection against discrimination". The only way to avoid discrimination was to ensure that an independent judiciary was always the final arbiter.

30. Mr. EL SHAFEI said that the Ukrainian delegation, in its reply to questions raised with regard to the freedom of movement, had asserted that there remained no legal basis for restricting that freedom. On what grounds, then, were such restrictions in force? The report stated that the residence permit and the internal passport, the requirement for which contravened the provisions of the Covenant, had not been abolished; but when would they be? Those restrictions were particularly unfortunate in the context of the active social and economic reorientation of the population.

31. Furthermore, the Ukrainian authorities were apparently having difficulties with a number of groups that either openly or covertly advocated extremist ideologies; citing article 20, paragraph 2, he inquired what measures they were taking to combat such manifestations of hatred. It would also be useful to know if any such cases had come before the courts.

32. Mr. BÁN inquired whether the State secrecy legislation in force under the former regime had been repealed. It would also be useful to know if the compulsory measures of a medical character described in paragraph 137 were subject to constitutional or other controls. Noting that paragraph 139 referred to regulations designed to prevent interference in the personal life of citizens, he remarked that, in a democratic society, such infringements of privacy were sometimes necessary in the interests of public order and national security. Were such measures invoked by the courts or subject to other controls? Finally, in the case of conscientious objection, by what means did the authorities confirm the authenticity of an individual's religious conviction? Since an adherent to a religious faith did not register with his church in Ukraine, how did he establish his affiliation?

33. Mr. ANDO said that information on the relationship between State-controlled and private television stations would be useful. What restrictions were placed on private television stations? How were they licensed, registered and taxed? Government restrictions aside, what other forms of media censorship existed, such as, for example, pressure from criminal or religious extremist groups?

34. Ms. EVATT said that it remained unclear how the provisions of article 13 were implemented, in particular with regard to the right of an individual facing expulsion to appeal to competent authorities. It would also be useful to know how many people had applied for asylum in Ukraine and how many had had their request refused.

35. Furthermore, she asked what controls or restrictions, if any, were imposed on expenditures related to political and electoral processes. The reference to legal limitations in paragraph 167 should have been accompanied by precise data describing their application: were they in fact applied and, if so, under what circumstances?

36. Finally, she wished to stress the importance of article 24: the protection of children was especially critical during the period of transition, with its attendant economic constraints. Paragraph 195 cited "a considerable reduction in the ability of the State to undertake ... the protection of children", but the report did not provide any information to elucidate that statement.

37. Mr. LALLAH inquired why paragraphs 72 and 73, which discussed such issues as the internal passport and the residence permit, were dealt with under the section on article 8, which addressed the abolition of slavery. In any event, those restrictions were never excusable and contravened the provisions of the Covenant. He asked what remedies were available to an individual who was refused a residence permit.

38. Mrs. MEDINA QUIROGA reminded the delegation of Ukraine that two questions she had put in relation to section II of the list of issues, and in particular to the situation of children living in irregular circumstances, remained unanswered: firstly, how were the cases of children confronting the criminal justice system handled? And, secondly, what measures were in force to assist

homeless children and those in troubled family situations? She also wished to ask whether a Ukrainian mother could give her nationality to her child and whether the measure described in paragraph 199, which was cast in the past tense was in force, and, concomitantly, what provisions existed that guaranteed redress to the parents of such children.

39. The CHAIRMAN invited the Ukrainian delegation to respond to the questions put by Committee members.

40. Mr. KRUKOV (Ukraine) said that a question had been raised about liberating the press from governmental control; the press was, however, independent, and categorically not under government control. Most press organizations were private and owned by private organizations or individuals.

41. Nor did the Committee's information concerning the participation of foreigners in the Ukrainian press appear to be correct. He was aware of newspapers in his country whose stock was held entirely by foreigners. Five hundred or so television companies currently operated in Ukraine. They were licensed to broadcast by the National Council on Radio and Television, which dealt only with the question of technical competence and not with issues of a political nature. Although certain limits were placed on monopolies and advertising, those were the only constraints. He wished to stress that restrictions on the media were virtually non-existent in Ukraine. Therefore, the concerns of the Committee must be seen as unfounded. Of the nine television channels operating in Kiev, two were State-run. Conflict sometimes arose between the Kiev authorities and private companies vying for the right to the same licence; that was, however, a separate issue.

42. Under the former system, exit visas had been required for travel to all countries. That provision had been repealed; external passports were currently granted to all Ukrainian citizens and exit to any country was permitted. The problems that sometimes arose concerning entry visas into other countries were external matters. The Ukrainian passport was valid for a period of 10 years. There were, however, objective circumstances on the basis of which an exit visa could be refused. Individuals who had access to State secrets, for instance, were not permitted to leave Ukraine for a term of five years after such access ceased. The individual concerned was required to consent to those conditions upon accepting a post involving knowledge of State secrets. Ukrainians also enjoyed the right to redress in the event of refusal of a passport: complaints were settled in the courts. He wished to stress that those problems concerned only departure from Ukraine; there were no restrictions on return.

43. Only those political activities which were deemed to represent a danger to society were banned in Ukraine, such as the dissemination of fascist or racist ideas or propaganda for war. Ukraine believed that the State should not allow the spread of such ideas.

44. Furthermore, only the Communist faction that had fomented the abortive coup d'état of August 1991 had been banned; under the circumstances, its rehabilitation was unlikely. It was important to note that a Communist party was currently active in Ukraine; communism as an ideological system had not been outlawed.

45. A number of questions had been posed with regard to the propiska registration system; the Committee's concerns were understandable. However, if favourable circumstances emerged, he was confident that Ukraine would adopt the universally accepted standard with regard to residence status.

46. Military service was mandatory in Ukraine, and Ukrainian legislation did not allow individuals the right to conscientious objection. Some religious denominations did not permit their adherents to take up arms; a provision had therefore been adopted allowing those persons to engage in alternative service.

47. If an economic measure underwent a legal provision, it must immediately be reassessed. Indeed, no economic measure should be permitted to erode the efficacy of legislation. The lack of funds would inevitably, however, affect the rights of persons in custody.

48. The Ministry of Internal Affairs had formerly maintained the special psychiatric institutions; those institutions had now been turned over to the Ministry of Health. He wished to point out that the realization of rights, including those of detainees, was dependent upon the amount of information that was available to society at large. A certain amount of publicity had been accorded to recent legislation; such availability of information was, generally speaking, a guarantee of rights.

49. The President appointed judges from a list of candidates drawn up by a commission composed of judges themselves. While a president might have his own political considerations, judgeships were professional positions, implying professional impartiality. Furthermore, he pointed out that the terms of office of judges and the President did not coincide.

50. Mr. MAVROMMATIS said that unfortunately his remarks had been misconstrued. Firstly, he had argued that conscientious objection should be admissible on non-religious as well as on religious grounds; any other approach was discriminatory. Secondly, the comments he had formulated with regard to paragraph 92 of the report should be seen simply as advice, and required no reply. Thirdly, he had in no way intended to imply that the Ukrainian Government was attempting to tamper with the independence of the judiciary.

51. Mr. KRUKOV (Ukraine) thanked Mr. Mavrommatis for his clarifications. Current Ukrainian legislation did not recognize conscientious objection on grounds other than religious ones. Those who refused military service on non-religious grounds were considered criminals and subject to criminal prosecution.

52. The protection of minors was an issue of considerable importance to his Government. A law adopted earlier in the year represented an effort to consolidate and coordinate all programmes and institutions which addressed the problems of youth. A broad range of institutions and services for young people existed, among them the Committee on Juvenile Affairs (under the Council of Ministers), the Executive Committee of the President's Office, medical centres specifically for young people (under the Ministry of Health), juvenile courts, juvenile judges, schools for the rehabilitation of young

people (under the Ministry of Education), and special juvenile branches of the criminal police as well as special corrective detention centres (both under the Ministry of Internal Affairs). In addition, the social protection of young people was the responsibility of a variety of organizations, public and private. If the Committee so wished, he could provide it with the text of the new law on juveniles.

53. A child could be removed from the home if it was established by a court of law that the parents were failing properly to carry out their responsibilities; the child was then placed under the guardianship of the State, which assumed the responsibility for his upbringing.

54. The CHAIRMAN invited the members of the Committee to address concluding remarks to the Ukrainian delegation.

55. Mr. KLEIN said that, as others had pointed out, the report discussed was in fact, if not in name, the first report of a newly independent State. Ukraine was undergoing a period of major change. Problems of course abounded; that country could not expect to meet all its human rights obligations at once. It should take care, however, not to adduce economic shortcomings in justification of a failure to implement the principles of human rights. There were many improvements that did not require funds - for instance, respect for the human dignity and integrity of detainees. The central challenge before the Government of Ukraine was the creation of an environment and culture which would favour respect for human rights. It was the particular responsibility of the Government to play a leading role in the human rights education of the Ukrainian people.

56. Mr. LALLAH said that the report was a most interesting one, depicting as it did a country in full transition from an autocratic system to one which aspired to embrace the principles of human rights. While many positive changes had certainly occurred, there were unquestionably difficulties inherent in that process. The current generation was no doubt still influenced by its own education, which had taken place under the former autocracy. The attitudes of people, especially those in particularly responsible positions, would have to change. The police, for example, had been functioning to date in a working environment which surely did not emphasize the promotion of the principles of human rights. Finally, in drafting its constitution, Ukraine should conscientiously compare each of its provisions with those of the Covenant.

57. Mr. BUERGENTHAL said that, although the legislative action being undertaken in Ukraine to address existing problems was impressive, the enforcement of human rights legislation and of the international instruments to which Ukraine was a party clearly left much to be desired. It was easier to adopt legislation than to enforce it. Ukraine should therefore focus on giving effect to existing rights and on providing adequate remedies for their enforcement.

58. He had been somewhat surprised by the delegation's failure to give meaningful answers to a number of pertinent questions regarding the treatment of Gypsies, Hungarians and other minorities. Moreover, a statement to the effect that Ukraine had no history of anti-Semitism and that the issue had

been resolved with the conviction of a single newspaper editor was surprising, to say the least. Discrimination and racism were best dealt with openly rather than by trying to sweep the problems under the carpet or to distort history.

59. He complimented Mr. Krukov on his contribution to human rights education and lawmaking and hoped that the projects he was spearheading would achieve the success they deserved.

60. Mr. FRANCIS commended the delegation on the candour of its answers to both the written and oral questions. Coming from a society that was also engaged in a process of structural adjustment, he could well appreciate the difficulties encountered in complying with specific articles of the Covenant.

61. He had been impressed by the delegation's affirmation that international treaties took precedence over domestic law and that Covenant provisions could be invoked in the courts.

62. Emphasis was being placed on human rights education in schools, and Ukraine's attitude to homosexuals and the disabled had been influenced to the extent that such issues were recognized as falling within the scope of application of human rights standards.

63. The foundations had been laid for solid progress and he trusted that the fifth periodic report would make up for any shortcomings in the fourth.

64. Ms. EVATT commended Ukraine's ratification of the Optional Protocol and its willingness to act on the Committee's views.

65. The tasks before it were formidable, in particular the adoption of a constitution, the drafting of legislation to ensure full compliance with its obligations under the Covenant, especially article 2, and the introduction of new institutions such as independent courts, an independent public prosecutor and a reformed police force. Even more important was the need to change the attitudes of those responsible for exercising State authority and to inform members of the general public about their rights.

66. She criticized the excessive resort to capital punishment and the inhumane aspects of that policy.

67. It was essential to ensure that all members of minorities, citizens and non-citizens, religious and non-religious, were fully integrated into society.

68. Positive action was needed to enhance the role of women. Unless specific steps were taken as soon as possible to break with the past, traditional attitudes towards women were in danger of becoming entrenched.

69. Mr. EL SHAFEI said that the Committee's dialogue with the delegation of Ukraine had left him with a feeling of hope for the future. Reference had been made to the need to enhance citizens' awareness of their rights so that they could seek redress if those rights were violated.

70. He had been disturbed to read in the report that the transition to a free-market economy had been conducive to a polarization of society and to inequality in the enjoyment of human rights. Faltering economic development could on no account be invoked to justify a delay in the establishment of human rights guarantees.

71. Ukraine had been a co-sponsor in 1989 of the second Optional Protocol aiming at the abolition of the death penalty, which had been operational since 1991. The increase in executions in independent Ukraine and the secrecy surrounding the death penalty, particularly the failure to inform the prisoner's family, were very troubling features, and he urged the authorities to ratify the second Optional Protocol. The Committee would also appreciate further information concerning the Clemency Commission and the status of its opinions.

72. Mrs. CHANET noted that any society in transition was bound to face difficulties, but the difficulties that she had identified in Ukraine revealed a certain approach that might also impede full enjoyment of human rights.

73. The first was the difficulty in drafting a constitution. There was a president of a constitutional court but no court because of the absence of a constitution. Citizens were thereby deprived of essential human rights guarantees.

74. With regard to the rights of women and the death penalty, Ukraine claimed that economic and social factors were an obstacle to the enforcement of women's rights and maintained that public opinion was not ready for the abolition of the death penalty. However, it was for the authorities to convince the public of the need for change through education and to combat crime through preventive action and rehabilitation of criminals.

75. With regard to the aftermath of the former system, she felt that the delegation had not provided sufficient information regarding internal passports, exit visas and the issue of State security, although those anachronisms had been recognized as obstacles to the implementation of article 12 of the Covenant. A step-by-step approach was allegedly necessary to change the situation.

76. In response to her own question regarding a hierarchy of rights, the delegation had stated that a hierarchy existed, but a recent general comment by the Committee was clearly opposed to such a view, on the grounds that the establishment of a hierarchy of rights could lead to abuse of what were seen as "lesser" rights.

77. She welcomed the delegation's indication that the results of the current dialogue would be published in Ukraine.

78. Mr. MAVROMMATIS noted that the reform process in Ukraine was progressing at an impressive pace.

79. The death penalty, however, should be kept under constant review, in terms of both the range of capital offences and the question of the ratio of convictions to commutations, which seemed to be unusually high.

80. Internal passports and exit visas should be abolished. If the authorities wished to prevent certain persons from leaving the country, why not issue a "stop list"?

81. With regard to the question of conscientious objection, it was clearly discriminatory to make a right dependent on adherence or non-adherence to religion. The country had accepted the first Optional Protocol. Why wait for an individual petition to be made to the Committee in order to rectify the matter?

82. The independence of the judiciary should be underpinned by means of specific provisions regarding appointment, tenure, emoluments and immunity from civil and criminal process.

83. He urged the authorities to ascertain as soon as possible whether existing legislation would allow the Committee's views under the Optional Protocol to be implemented with ease. If not, appropriate legislation should be introduced.

84. Mr. BÁN said that, although a long list of positive observations could be made with regard to Ukraine, it was in the nature of the concluding oral remarks to focus on difficulties and shortcomings.

85. The Constitution was a key issue. The current interim Constitution was in many respects out of tune with the Covenant and the process of drafting a new constitution should therefore be accelerated.

86. In addition, some points of existing legislation openly contradicted the provisions of the Covenant, for example the internal passport and the fact that suspects were not promptly brought before a court following arrest. A review should be initiated with a view to amending or repealing the offending laws, particularly in the light of Ukraine's ratification of the Optional Protocol.

87. In general, he found that, although the authorities were aware of instances of lack of compliance with the Covenant, they tended to remain passive, for example in the face of not always isolated signs of intolerance and incitement to national, ethnic or religious hatred.

88. Mr. PRADO VALLEJO said that Ukraine was in the process of moving from a repressive authoritarian system to one based on democracy and pluralism. That was a process that took time to complete, and it would be wrong to harass the authorities, which seemed to have adopted a positive attitude to implementation of the Covenant.

89. The delegation was aware of the Committee's concerns, particularly regarding the death penalty, and would no doubt convey them to the Ukrainian Government. He felt that what Ukraine needed most of all in the current situation was encouragement, and that was what he personally wished to offer.

90. Mr. BRUNI CELLI said that the discussion with the delegation of Ukraine had confirmed that democracy was the system best equipped to protect human rights. Under the new circumstances, a major effort would have to be made to replace the authoritarian attitudes and mentalities characteristic of totalitarianism by a spirit of democratic tolerance and participation. He trusted that such a change of attitude would eventually be followed by the abolition of the death penalty and by an improvement in the treatment of minorities.

91. Mr. KRETZMER said that legislation alone was not sufficient to promote human rights. One of the shortcomings of the report was the lack of factual information on the implementation of laws such as that against incitement to racial hatred. The Committee had been told that implementation of that law had been delayed, but no further details had been given.

92. A vibrant community of non-governmental organizations was essential for the protection of human rights, and he was concerned to note that there were still certain restrictions on freedom of association of voluntary groups in Ukraine.

93. Mrs. MEDINA QUIROGA noted that it was extremely difficult to change attitudes overnight and suggested employing the resources of the mass media for the purpose. In reacting to problems, Ukraine should be guided at all times by the need to protect human rights. Careful attention should be given to reducing restrictions on individual freedoms.

94. The process of review of detentions seemed to be in the hands of the police and the public prosecutor rather than the courts. With regard to the problems raised in connection with prisons, she wondered whether it might not be possible to decriminalize certain acts, for example vagrancy.

95. She advocated the establishment of a mechanism to assist in implementing the Committee's views.

96. Mr. BHAGWATI expressed the hope that the people of Ukraine would soon have a new constitution since, in its absence, many of the human rights conferred by the Covenant might well prove illusory. He strongly recommended the inclusion of a specific provision setting up a judicial mechanism for enforcement of those rights in clear and explicit terms. He commended to the delegation the United Nations Basic Principles on the Independence of the Judiciary.

97. He recommended the establishment of a national human rights commission or human rights ombudsman, which should operate as an independent body responsible for ensuring human rights education and dissemination and for investigating human rights violations.

98. Mr. ANDO said that he sympathized with Ukraine's unfortunate experience of 70 years of domination by the Soviet Union. However, it now had the opportunity to prove that Ukraine as an independent State was capable of

achieving all the goals of the Covenant. In his view, education was the key to that achievement, education of all three branches of government and also of the general public. He understood that Mr. Krukov was already deeply involved in that project.

99. Mr. KRUKOV (Ukraine) said that his delegation's dialogue with the Committee had been an extremely enlightening and uplifting experience. Its members could rest assured that the positive trends reported in Ukraine were irreversible and that their views and advice would be passed on to the Ukrainian Government and taken into account in future legislation.

100. The CHAIRMAN thanked the delegation for the frank and open dialogue with the Committee, which he hoped would be of genuine use to Ukraine. The members of the Committee would be available to offer assistance at any time.

The meeting rose at 1.10 p.m.